



**U.S. Department of Justice**

*S. Amanda Marshall*

*United States Attorney*

*District of Oregon*

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April 9, 2013

John Dunbar  
Attorney in Charge, Special Litigation Unit  
Oregon Department of Justice  
1515 S.W. Fifth Avenue, Suite 400  
Portland, OR 97201

Re: Meeting with OHA and AMH on Investigation of Oregon's Mental Health System, DJ#168-61-30

Dear Mr. ~~Dunbar~~ <sup>John</sup>:

This letter is in follow-up to my recent meeting with you and your clients, Bruce Goldberg, Director, and Linda Hammond, Interim Director, Addictions and Mental Health Division, of the Oregon Health Authority. We were pleased to learn that Oregon is commencing implementation of the process memorialized in our November 9, 2012 letter ("2012 letter"). The 2012 letter concerns the United States Department of Justice's ("DOJ") investigation of Oregon's compliance with the integration mandate of Title II of the Americans with Disabilities Act ("ADA") and *Olmstead v. L.C.*, 527 U.S. 581 (1999) for persons with serious and persistent mental illness ("SPMI"). Based on our discussion, I believe we share a mutual interest in Oregon implementing the 2012 letter's vision of and blueprint for integrated, community-based care through an array of services.

We understand and applaud that Oregon is in the midst of transforming its health care system. The transformation includes integration of the systems delivering physical and mental health care and expanding coverage under the Oregon Health Plan. As we discussed and agreed in our March 21, 2013 meeting, it is Oregon's intent to use this health reform process to better provide individuals with SPMI with the critical community services necessary to help them live in the most integrated setting appropriate to their needs and to achieve positive outcomes.

We also understand that Oregon is in the midst of its biennial budget process for fiscal years 2013-15, and that the Governor has proposed adding \$142 million dollars to the mental health budget with the majority going for increased community services. We also applaud this proposed infusion of much-needed state funds. This potential increase in funding provides a tremendous opportunity for Oregon and DOJ to work together to embed and fund the reform in the design of Oregon's health care system outlined in the 2012 letter.

Historically, individuals with SPMI have entered the State's mental health system in expensive and segregated settings such as acute in-patient psychiatric facilities, emergency rooms, jails, and prisons because the State has failed to develop adequate community-based

mental health services. This system results in mental health care to adults with SPMI which is expensive; takes individuals away from their homes and communities; perpetuates unwarranted assumptions that these individuals are incapable or unworthy of participating in community life; and, severely diminishes these individuals' everyday life activities. We have previously discussed the system areas that will address these concerns and included them in our 2012 letter matrix: (1) crisis services, such as mobile crisis, crisis walk in/drop off centers, and crisis apartments; (2) supports and services, such as Assertive Community Treatment teams, intensive case management, peer support, and supported employment; (3) increased early intervention services; (4) supported housing; (5) quality management; and (6) Medicaid maximization. These areas are critical for not only providing care in the most integrated setting, but also for providing services in the most cost effective manner.

In addition, the State has historically delegated the service delivery decision to localities. This delegation has resulted in a lack of meaningful oversight of what services are ultimately delivered or what adverse outcomes may result from that delivery, such as hospitalization or incarceration. As a result, the State was unable to identify what, where, or how many crisis and community-based supports and services are being provided throughout its mental health system, much less address the capacity and access gaps in those services. Accordingly, as set forth in the matrix attached to the 2012 letter, Oregon is in the process of collecting statewide system data on the services being provided and people being served.

Finally, we are mindful of the State's recent and ongoing budget difficulties. However, many if not most, community-based supports and services for individuals with SPMI are eligible for a Medicaid match, where every state dollar spent garners an additional \$1.70 in federal matching funds.<sup>1</sup> Notably, hospital-level care generally is not eligible for this match. Thus, maximizing these matching funds with community-based services provides needed funding, prevents individuals from entering crisis, and serves those individuals in less expensive, more integrated, lower levels of care.

Throughout our investigation, we have met with a range of stakeholders, including consumers, advocates, providers, and elected and public safety officials. We have heard a consistent message that the State must invest more in the type of critical community based services as provided in our 2012 letter matrix, and that investments in institutions – including the proposed hospital at Junction City – are draining resources that should be used to keep people in their homes and their communities. The process to which we have agreed is consistent with these values and with the goals set by the Governor in the health reform process.

As the State moves forward with its healthcare reform and its current budget process, we hope that these concerns are addressed and that this unique opportunity to begin to fund the mutually agreed-upon blueprint of the 2012 letter will not be missed. If the Governor's or some other proposal to increase funding for additional mental health services for adults with SPMI is adopted by the Legislature, we urge the State to remain flexible in determining how to spend the money. The data the State is collecting as required by the 2012 letter will inform how that money should be spent. We look forward to meeting with you to discuss that allocation in the

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<sup>1</sup> See Federal Medical Assistance Percentages, Fiscal Year 2012, available at <http://aspe.hhs.gov/health/fmap12.pdf>.

John Dunbar

Re: Agreement regarding United States' Investigation of Oregon's Mental Health System, DJ#168-61-30

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future. In the meantime, we will, of course, continue to meet with stakeholders to ensure that our agreed-upon blueprint translates to real improvements in the lives of people with mental illness.

We look forward to the collaborative process ahead. We are hopeful that our work together will address the gaps in, and improve the quality of, the community system for persons with mental illness during the coming years. It is contemplated that this process will ultimately successfully resolve our investigation once an array of essential community services are in place and positive outcomes are being achieved on agreed-upon metrics.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Marshall', with a long horizontal flourish extending to the right.

S. AMANDA MARSHALL

United States Attorney

District of Oregon

cc:

Jonathan M. Smith

Chief

Special Litigation Section

Civil Rights Division